REMARKS

Claims 1-7, 10-15, 18-31, 34-42 and 45-54 are pending in this application. By this Response, claims 1, 5, 11, 12, 14, 19, 20, 24, 25, 29, 35, 36, 40 and 46 are amended, claims 8-9, 16-17, 32-33, and 43-44 are canceled, and claims 47-54 are added. Claims 1, 12, 20, 25, and 36 are amended to emphasize that the remote probe measures performance data associated with a client device in which the performance data is data related to an interaction of the client device with a server device and that the local probe measures performance data associated with a server application on the server device with which the client device interacts, the performance data being related to an interaction of the server application with the client device. Claims 5, 11, 14, 19, 24, 29, 35, 40 and 46 are amended to make their language consistent with the amendments made to claims 1, 12, 20, 25 and 36. Support for the above amendments and new claims may be found at least at Figure 4 and its corresponding text; page 8, lines 9-11; page 10, line 16-17; and page 11, lines 19-21. Reconsideration of the claims in view of the above amendments and the following remarks is respectfully requested.

I.   Telephone Interview

Applicants thank Examiner Vu for the courtesies extended to Applicants' representative during the July 7, 2005 telephone interview. During the interview, Applicants' representative discussed the above amendments and distinctions of the claims over the cited reference. Examiner Vu agreed that the above amendments to the claims define over the Reps reference. Thus, unless Examiner Vu finds more relevant prior art in an updated search, the present claims should now be in condition for allowance. The substance of the telephone interview is summarized in the following remarks.

II. PTO Form 1449

It is noted that the PTO Form 1449 filed with the present application on January 31, 2002 was not returned to Applicants' representative with the Examiner's initials indicating consideration of the references listed therein. Applicants respectfully request that the Examiner forward, in the next communication from the Examiner, a copy of the signed PTO Form 1449 with the Examiner's initials next to each listed reference indicating consideration of the references.

III. Rejection of Claims 1-46 under 35 U.S.C. § 102(e)

The Office Action rejects claims 1-46 under 35 U.S.C. 102(e) as being allegedly anticipated by Reps et al. (U.S. Patent No. 6,070,190). This rejection is respectfully traversed.

Claim 1, which is representative of the other independent claims 11, 20 with regard to similarly recited subject matter, reads as follows:

> 1.   A method for probing services in a network environment, said method comprising:
> providing a script;
> providing a remote probe configured to measure a first set of performance data associated with a client device, wherein the performance data is data related to an interaction of the client device with a server device;
> providing a local probe configured to measure a second set of performance data associated with a server application on the server device with which the client device interacts, wherein the second set of performance data is data related to an interaction of the server application with the client device;
> measuring a client-server application's performance, with said local and remote probes, according to said script, to thereby generate the first set of performance data and the second set of performance data; and
> collecting, in a database, the first and second sets of performance data produced by said measuring.

A prior art reference anticipates the claimed invention under 35 U.S.C. § 102 only if every element of a claimed invention is identically shown in that single reference,

arranged as they are in the claims. *In re Bond*, 910 F.2d 831, 832, 15 U.S.P.Q.2d 1566, 1567 (Fed. Cir. 1990). All limitations of the claimed invention must be considered when determining patentability. *In re Lowry*, 32 F.3d 1579, 1582, 32 U.S.P.Q.2d 1031, 1034 (Fed. Cir. 1994). Anticipation focuses on whether a claim reads on the product or process a prior art reference discloses, not on what the reference broadly teaches. *Kalman v. Kimberly-Clark Corp.*, 713 F.2d 760, 218 U.S.P.Q. 781 (Fed. Cir. 1983). Applicants respectfully submit that Reps does not identically show every element of the claims arranged as they are in the claims. Specifically, Reps does not teach a remote probe that is configured to measure a first set of performance data associated with a client device, a local probe configured to measure a second set of performance data associated with a server application on a server device with which the client device interacts, the first set of performance data being data related to an interaction of the client device with the server device and the second set of performance data being data related to an interaction of the server application with the client device.

Reps et al. is directed to a client based application availability and response monitoring and reporting for distributed computing environments. With the system of Reps, the probe is present on the client computing device and an end user enters configuration information for the probe directly into the client device. The probe configuration information is proved to executable application monitoring and alert (AMA) probe code. The AMA probe code uses the configuration information to initialize server requests to an application program. The AMA probe code determines if service responses are received and if the responses indicate a successful transaction. If the transaction is successful, a transaction record is generated, stored in a local or remote repository, and the process is then repeated.

Contrary to the present invention, the system of Reps includes only a single probe to monitor the interaction between a particular client and a particular server. That is, only one AMA probe is provided between any client and server device. While Reps states at that there may be multiple probes in a network and that data may be compiled in a centralized repository for the multiple probes, this merely means that there may be multiple client based AMA probes for monitoring that particular client's interaction with servers. Nowhere in Reps is there any teaching or suggestion of using a pair of probes,

i.e. a local probe that measures performance data of a server application and a remote probe that measures performance data at a client device, for a particular client-server pair. To the contrary, Reps only ever uses a single AMA probe to measure performance data from a client device with respect to a client-server interaction.

This is clearly shown in Figures 2, 4, and 15 and corresponding text in Reps. While Figure 6 of Reps shows the server having AMA probe applets, the text corresponding to this figure at column 17, line 45 to column 19, line 40, clearly indicates that the AMA probe applet is provided to the client device which then implements the AMA probe. Thus, again, only a single probe is utilized at the client device to monitor performance data of an interaction between the client device and the server. Nowhere in Reps is there a teaching, or even suggestion, regarding providing a remote probe configured to measure a first set of performance data associated with a client device, wherein the performance data is data related to an interaction of the client device with a server device and providing a local probe configured to measure a second set of performance data associated with a server application on the server device with which the client device interacts, wherein the second set of performance data is data related to an interaction of the server application with the client device.

The present invention, as recited in claim 1, provides an improvement over the mechanism described in Reps in that the present invention is able to monitor the interaction between a client and a server from both the client perspective and the server perspective. In this way, a more complete understanding of the performance of the network, server application, and client device is obtainable. With the mechanism described in Reps, only the client's perspective with regard to performance of the interaction between the client and the server is obtainable. This leaves gaps in information that are filled by the mechanisms of the present invention, as recited in claim 1.

In view of the above, Applicants respectfully submit that Reps does not teach each and every feature of claim 1, or similar features found in independent claims 1, 12, 20, 25, and 36, as is required under 35 U.S.C. 102(e). At least by virtue of their dependency on claims 1, 12, 20, 25, and 36, respectively, Reps does not teach each and every feature of dependent claims 2-7, 10-11, 13-15, 18-19, 21-24, 26-30, 34-35, 37-42

and 45-46. Accordingly, Applicants respectfully request withdrawal of the rejection of claims 1-7, 10-15, 18-31, 34-42 and 45-46 under 35 U.S.C. 102(e).

IV. Newly Added Claims 47-54

Claims 47-54 are added to recite additional features of the present invention which are not taught or suggested by the Reps reference. In particular, claims 47, 49, 51 and 53 are added to recite a method, system and computer-usable medium, respectively, in which the local probe and the remote probe measure response time to requests generated by the script, and which further comprise comparing a first response time measured by the local probe to a second response time measured by the remote probe. Nowhere in Reps is there any teaching or suggestion to compare a response time obtained from a local probe with a response time obtained from a remote probe.

Claims 48, 50, 52 and 54 are added to recite a method, system and computer-usable medium, respectively, in which measuring a client-server application's performance, with said local and remote probes, according to a script, to thereby generate a first set of performance data and a second set of performance data comprises performing a plurality of transactions with a plurality of different servers and measuring performance characteristics with regard to each transaction and each server using said remote probe, and obtaining performance data from each of a plurality of local probes associated with each server. Nowhere in Reps is there any teaching or suggestion to have a plurality of local probe that obtains performance data from their respective servers and a single remote probe that obtains performance data for a plurality of transactions with a plurality of different servers.

In view of the above, Applicants respectfully submit that Reps does not teach or suggest the features found in newly added claims 47-54. Prompt and favorable consideration of claims 47-54 is respectfully requested.

V. <u>Conclusion</u>

It is respectfully urged that the subject application is now in condition for allowance. The Examiner is invited to call the undersigned at the below-listed telephone number if in the opinion of the Examiner such a telephone conference would expedite or aid the prosecution and examination of this application.

Respectfully submitted,

DATE: _July 11, 2005_
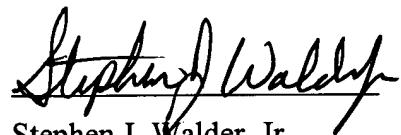
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